

1 **IN THE UNITED STATES DISTRICT COURT**
2 **FOR THE DISTRICT OF PUERTO RICO**

3 **RICARDO JOSE HUERTAS BAUZA,,**

4 **Plaintiff,**

5 **v.**

Civil No. 13-1254 (GAG)

6 **OSCAR P. FOURNIER GONZALEZ,**

7 **Defendant.**

8 **MEMORANDUM OPINION AND ORDER**

9 On October 5, 2012, Ricardo Huertas Bauza (“Plaintiff”) filed this motion against Oscar
10 Fournier Gonzalez (“Fournier”) and Universal Insurance Company (collectively “Defendants”) in
11 the Court of First Instance. (Docket No. 7-1.) Plaintiff claimed Fournier negligently operated his
12 vehicle in a manner that caused a collision with Plaintiff’s vehicle. (See id. at 1.) On March 27,
13 2013, Defendants removed the case to federal court citing the court’s exclusive jurisdiction to
14 adjudicate claims arising under the Federal Torts Claims Act (“FTCA”), 28 U.S.C. 1346(b). On
15 May 16, 2013, Defendants filed a motion to dismiss claiming Plaintiff failed name the United States
16 as the defendant and to exhaust his administrative remedies. (See Docket No. 8.) Plaintiff never
17 responded to the motion. Accordingly, the court **GRANTS** Defendants motion to dismiss.

18 **I. Discussion**

19 The FTCA is the exclusive remedy for a plaintiff to sue the government or an employee of
20 the government for tortious actions. 28 U.S.C. § 1346(b)(1). The proper defendant in a suit under
21 the FTCA is the United States. See 28 U.S.C. § 2679; Nieves-Romero v. U.S., 715 F.3d 375, 378
22 (1st Cir. 2013). Claims against government agencies or employees are improperly brought under
23 the FTCA and must be dismissed. See McCloskey v. Mueller, 446 F.3d 262, 266 (1st Cir. 2006).
24 Additionally, a plaintiff alleging violations of the FTCA must exhaust all available administrative
25 remedies. See 28 U.S.C. § 2675(a); Ortiz-Lebron v. U.S., Civil No. 10-1513 (SEC), 2012 WL
26 6552782, at *4 (Dec. 14, 2012). “Exhaustion of administrative remedies is a jurisdictional,
27 non-waivable prerequisite to the prosecution of a FTCA claim.” Id. (citing Santiago–Ramirez v.
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Civil No. 13-1325 (GAG)

Sec'y of Dept. of Def., 984 F.2d 16, 8 (1st Cir.1993)).

Plaintiff has presented no argument that he has exhausted his administrative remedies. Similarly, Plaintiff has not communicated with the court his desire to amend his complaint to sue the United States as required. Therefore, the court must **GRANT** Defendants' motion to dismiss and **DISMISSES** Plaintiff's claims **without prejudice**.

SO ORDERED.

In San Juan, Puerto Rico this 1st day of August 2013.

s/Gustavo A. Gelpí

GUSTAVO A. GELPI
United States District Judge